

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 JOHN RUIZ,

Case No. 2:18-cv-00091-RFB-EJY

5 Plaintiff,

ORDER

6 v.

7 NEVADA DEPARTMENT OF
8 CORRECTIONS, *et al.*,

9 Defendants.

10 Presently before the Court is Plaintiff's Motion for Re-Service of Summonses, Amended
11 Complaint, and Screening Order.¹ ECF No. 37. Defendants have not filed an opposition to
12 Plaintiff's Motion. The Court finds as follows.

13 On May 28, 2019, the Court screened Plaintiff's operative First Amended Complaint (ECF
14 No. 12) and allowed Plaintiff's sexual assault claim, failure to protect claim, retaliation claim, due
15 process in disciplinary hearings claim, deliberate indifference to serious medical needs claim, and
16 deprivation of property claim to proceed against variously situated defendants. ECF No. 13 at 15–
17 16. The Court also imposed a 90-day stay and referred this case to the Court's Inmate Early
18 Mediation Program. *Id.* at 16. Thereafter, the Office of the Attorney General filed a status report
19 indicating that settlement had not been reached and informed the Court of its intent to proceed with
20 this action. ECF No. 20.

21 On August 27, 2019, this Court lifted the stay of this case, granted Plaintiff's applications to
22 proceed *in forma pauperis* (ECF Nos. 4, 11), and directed:

23 the Attorney's General Office [to] file a notice advising the Court and Plaintiff of:
24 (a) the names of the defendants for whom it accepts service[,] (b) the names of the
25 defendants for whom it does not accept service, and (c) the names of the defendants
26 for whom it is filing the last-known-address information under seal. As to any of
the named defendants for whom the Attorney General's Office cannot accept
service, the Office shall file, under seal, but shall not serve the inmate Plaintiff the
last known address(es) of those defendant(s) for whom it has such information.

27 ECF No. 21 at 2.

28 ¹ The Court has made typographical changes in the title of Plaintiff's Motion for the sake of clarity.

1 On September 17, 2019, the Office of the Attorney General filed a Notice of Acceptance of
2 Service on behalf of Defendants Tara Carpenter and David Carpenter. ECF No. 22 at 1. The
3 Attorney General also advised the Court and Plaintiff that it did not accept service on behalf of
4 Defendants Celia Chacon, Robert LeGrand, Quentin Byrne, John Scott, Paul Simms, Adrian Garcia,
5 Richard Garcia, Raul Rosas or “Kerri.” *Id.* On that same date, the Attorney General filed the last
6 known addresses for all defendants except Kerri and Fredericks. ECF No. 23.² The Attorney
7 General failed to advise the Court whether he had identified Defendant Fredericks and would accept
8 service for Fredericks or, if he could identify Fredericks but would not accept service for this
9 defendant, if he had a last known address for this individual.

10 On November 22, 2019, Plaintiff filed a Motion for a 90 Day Extension of Time to effect
11 service on each Defendant. ECF No. 32. On December 4, 2019, this Court granted Plaintiff’s
12 Motion for Extension of Time to the extent it requested service on the eight named, but yet unserved
13 defendants. ECF No. 34 at 2. The Court denied the motion in all other respects as moot. *Id.* The
14 Court advised Plaintiff that if service on any of the defendants was not perfected, and Plaintiff
15 wanted to have service attempted again, Plaintiff had to file a motion and, to the extent available,
16 provide more-detailed information regarding how service should be attempted. *Id.* at 3. That same
17 day, the U.S. Marshal’s Office issued summonses as to the eight defendants. ECF No. 35.

18 On January 2, 2020, prior to service of any of the summonses, Plaintiff filed the instant
19 Motion requesting another attempt of service on Defendant Jeri Fredericks and the defendant now
20 identified as Carey. After Plaintiff filed the present Motion, summonses were returned executed as
21 to Robert LeGrand (ECF No. 41), Quentin Byrne (ECF No. 45), John Scott (ECF No. 38), Adrian
22 Garcia (ECF No. 40), and Raul Rosas (ECF No. 42). However, summonses were returned
23 unexecuted as to Celia Chacon (ECF No. 51), Paul Simms (ECF No. 44), and Richard Garcia (ECF
24 No. 39). Specifically, the U.S. Marshal’s Office reported that Chacon and Garcia no longer reside
25 at the addresses provided by Plaintiff and that Simms is now deceased. Plaintiff has not filed a

26
27 ² The Attorney General explained that he was not authorized to accept service on behalf of Defendant Kerri and
28 had no last known address for this individual because the Attorney General could not identify any current or former
employee of the Nevada Department of Corrections by that name. ECF No. 22 at 1-2.

1 motion requesting another attempt of service on Defendants Chacon and/or Garcia. Plaintiff states
2 that these defendants worked as correctional officers for the Nevada Department of Corrections at
3 the Lovelock Correctional Center and, further, corrected the name “Kerri” to “Carey.” ECF No. 37
4 at 3. Liberally construed, Plaintiff’s Motion also states a desire to have service attempted again on
5 these defendants.

6 Accordingly,

7 IT IS HEREBY ORDERED that Plaintiff’s Motion for Re-Service of Summonses, Amended
8 Complaint, and Screening Order (ECF No. 37) is GRANTED in part, and DENIED in part.

9 Plaintiff’s Motion is GRANTED to the extent that within **ten (10) days** of the date of this
10 Order, the Attorney General’s Office:

- 11 • shall file a notice stating whether it has identified Defendants Jeri Fredericks and Carey
12 and provide: (a) the corrected name(s) of the Defendant(s), if any, for whom it accepts
13 service; (b) the name(s) of the Defendant(s) for whom it does not accept service, and (c)
14 the names of the Defendant(s) for whom it is filing the last-known-address information
15 under seal. As to any of these Defendants for whom the Attorney General’s Office does
16 not accept service, the Office shall file, under seal, but shall not serve the inmate Plaintiff
17 the last known address(es) of those Defendant(s) for whom it has such information. If
18 the last known address(es) of the Defendant(s) is a post office box, the Attorney General’s
19 Office shall attempt to obtain and provide the last known physical address(es);
- 20 • shall advise the Court whether it is able to find an alternative physical address for
21 Defendants Celia Chacon and Richard Garcia. If a more current address is secured for
22 these Defendants, the Court will direct the U.S. Marshal to again attempt to effect service;
23 and,

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- shall file a suggestion of death on the record for Defendant Paul Simms.

Plaintiff's Motion is DENIED without prejudice and held in abeyance to the extent it requests another attempt of service on Defendants Jeri Fredericks and Carey.

DATED THIS 23rd day of March, 2020.


ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE